

III. REMARKS

1. Claim 31 is amended to address the noted objections.
2. Claims 12 and 13 are cancelled without prejudice. Claim 11 is amended to include the limitations of claims 12 and 13.

Claim 11 as amended is not unpatentable over Constien in view of Becker under 35 U.S.C. §103(a).

Claim 11 recites that the first recess is positioned in the first runner to coincide with the first detent when the second body portion is in the closed position and that the first recess is positioned in the first runner to coincide with the first detent when the second portion is in the open position. This is not disclosed or suggested by the combination of Constien and Becker.

The Examiner notes that Constien does not disclose that the first recess is positioned in the first runner to coincide with the first detent is when the second body portion in the open position. Becker does not overcome this deficiency.

There is no disclosure in Becker that the second body portion is secured in the closed position (B) or open position (A). Becker does not describe or illustrate any type of securing structure that would provide such a securing mechanism. Fig. 1 of Becker only shows recess 25. Nothing in Becker suggests a detent and recess structure as claimed by Applicant, let alone a recess in the runner that coincides with the detent when the second body is in the open or closed position.

Furthermore, it is submitted there is no motivation to combine Constien and Becker as required for purposes of 35 U.S.C. §103(a). In order to establish a *prima facie* case of obviousness under 35 U.S.C. §103(a), there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the references or combine reference teachings.

Neither Constien nor Becker provide the requisite motivation or suggestion to modify the reference as proposed for purposes of 35 U.S.C. §103(a). When "the PTO asserts that there is an explicit or implicit teaching or suggestion in the prior art, it must indicate where such a teaching or suggestion appears in the reference." In re Rijckaert, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) Constien shows a spring mechanism to hold the body portions apart. See e.g. FIGS 7, 8, and 9. There is no reason why one of skill in the art would look to Becker for another mechanism to hold the body portions apart or in an open position. One would not be motivated to modify Constien to add detents as recited by Applicant since the body portions are already secured or held apart by spring mechanisms and thus it is not necessary to include a second holding mechanism to keep the portions in the open position.

Furthermore, Constien already has a mechanism to hold the two parts together in the closed position. There is no reason to look to another mechanism to hold the parts in the closed position. Becker does not recite any particular advantage or structure to hold the parts in a closed position using its system. Thus, there is no reason why one would look to Becker or even consider Becker as an alternate, or modification to Constien, for securing the parts in an open or close position. There is also no such suggestion to do so found in either of the references. It is only with hindsight knowledge of what is claimed by Applicant, that one might see any particular advantage to modify Constien in view of Applicant's claims. However, with such hindsight knowledge, no such combination is disclosed or suggested by the references, and a *prima facie* case of obviousness cannot be established.

Thus it is submitted that claim 11 is allowable. Claims 14-24 should be allowable at least by reason of their respective dependencies.

3. Claim 14 is not disclosed or suggested by the combination of Constien and McKenzie. Claim 14 recites that the first recess is positioned in the first runner to "coincide" with the first detent when the second body portion is in a position intermediate the open and closed positions. Mackenzie only discloses that the

"respective components" (tabs, slide members, and switches) can be located so that "full retraction" of the housing is not necessary to activate the switches. This is not what is claimed by Applicant. Applicant claims that the body portions can be "positioned" in an intermediate position, Mackenzie merely discloses that the device can work in an intermediate position and does not disclose any structure to secure the parts in this intermediate position, let alone any need to secure the parts in the intermediate position.

The combination of Mackenzie and Constien might only result in a device that has a holding mechanism in the closed position and is biased to the open position. There is no disclosure of any type of a securing mechanism in any intermediate position in the combination of Mackenzie and Constien. Furthermore, given the spring mechanism of Constien, Figs 7-9, one of skill in the art would not be motivated to consider a detent arrangement as recited by Applicant in the claims and as discussed above. Any such consideration can only be made with hindsight knowledge of Applicant's claims. Thus, claim 14 should be allowable.

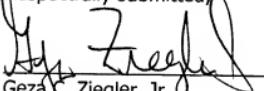
4. Claims 17, 18, 32, and 33 are also not disclosed or suggested by the combination of Constien, Becker and Mackenzie for similar reasons as those previously stated. Also claim 17 recites a third recess. There is also no disclosure in the combination of Constien, Becker and Mackenzie of a third recess. Thus, these claims should be allowed.

5. With respect to the double patenting rejection, it has been previously stated that claim 25 represents the indicated allowable subject matter of claim 19, and the intervening claims. Claim 25 is an independent claim while claim 19 is a dependent claim. Claim 25 should be allowable, as indicated by the examiner, and it is understood that the indicated allowability of claim 19, would result in a conflict with claim 25, if another such amendment was proposed. However, Applicant maintains that claim 11, as amended, is allowable in its current state. The scope of claim 11 is different from claim 25, as presently set forth. Thus, when the allowability of claim 11 is established, the double patenting issue should be moot.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge \$1,020 for a three-month extension of time together with payment for any other fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,



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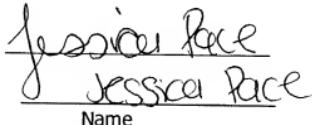
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Jessica Race
Name